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# VIRGINIA LAW REGISTER.

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## GIFT TO "WIFE AND CHILDREN."

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### A RECENT DICTUM.

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An *obiter dictum* of Judge Riely, in a recent opinion, will, I fear, result in much new litigation to again firmly establish the effect of what appears to be a favorite form of devise to married women in Virginia. I refer to his opinion in *Vaughan v. Vaughan*, delivered at Wytheville, July 6, 1899, and reported in 1 Va. S. C. R. 453. The effect of a devise to a mother and her children was the occasion of the suit.

The case was, undoubtedly, decided properly, and, in accordance with a long line of Virginia decisions, held that the mother took the fee, but in the course of his opinion Judge Riely says:

"If the testator had stopped at the end of the first clause, 'I do hereby bequeath to my wife, Emma Lee Vaughan, and to my children all my property of every kind, real and personal'; if this stood alone and constituted all that related to the gift, it could not be doubted that she and the children would have taken a joint estate in all of the property. This would be the plain and natural import of the language. It would be difficult to use plainer or more explicit language than the above to express the intention where the gift of a joint estate was the object of the testator. The testator, however, did not end the disposition of the property with the first clause, but went on to express himself further with regard to its disposition, and in the *subsequent* clause used language which *negatives* the idea that he intended to give the children a joint estate with his wife,"

and concludes that by reason of the language used in the *subsequent clause* the mother takes an absolute estate.

I agree with Judge Riely that the plain and natural import of the language "to my wife and to my children" would be to create a joint estate, and I also fully agree with him that it would be difficult to use plainer or more explicit language to express the intention; and if this were a new question in Virginia, I would have no difficulty in agreeing with his *dictum* as to the proper construction to be placed upon these words. But by a long line of decisions, beginning with *Wallace v. Dold*, 3 Leigh, 258, decided in 1831, I might say that a technical

effect has been given to such devises, and that unless there have been express words other than the words "and her children" to negative the idea of a sole estate, that the courts have, with but one exception (*Nickell v. Handly*, 10 Gratt. 336), uniformly held that the mother takes a sole estate and the children no beneficial interest. So many property interests have been acquired and transferred upon faith in the permanency of this rule of construction, that to change it now would unsettle many titles before regarded as unimpeachable, and work great hardship to purchasers and creditors. This class of devises comes within that rule of construction stated in *Stokes v. Van Wyck*, 83 Va. 729, as follows:

"Though the testator's intention when ascertained is implicitly obeyed, however informal the language in which it is conveyed, yet the courts in construing that language always resort to certain established rules—rules deeply imbedded in the law, by which *particular words and expressions standing unexplained have acquired a definite legal signification which does not always comport with their popular signification*," and testators are presumed to embody such provisions in their wills, with knowledge of the technical construction which has been given them.

In the beginning, the tendency of the English cases was in favor of a joint estate, as resulting from such devises, but in *Wallace v. Dold*, 3 Leigh, 258, in which the devise was to a trustee "to be applied to the maintenance and support of my daughter M. and her child," Judge Carr delivered the opinion of the court, and thus cast aside the English decisions, saying:

"There is nothing technical in the will; the simple inquiry is what *this* testator meant by the words he has used. In such an inquiry I do not think we can derive any aid from reported cases."

Thus relieved of all embarrassment from these former decisions, he arrived at the conclusion that the testator *in that case* meant to give nothing to the child, and that the use of the words only indicated the motive.

It is true that in this case any technical effect was thus disclaimed and much weight seems to have been given to the "intent of the testator as gathered from the scheme of the will." But Judge Tucker dissented vigorously from the conclusions of Judge Carr and his brethren, and delivered a dissenting opinion, in which he gave expression to the identical idea, in almost the same words, embodied in Judge Riely's *dictum*, though Judge Riely cites with approval the very opinion from which Judge Tucker is dissenting, when the latter says:

"In short, in the construction of this will, where the words are so plain, I do not see what we can do but follow them. For, I ask, if the testator really did mean what I think he meant, what plainer words could he have used to convey that meaning? And if this court decides that these words shall not convey that meaning, what words shall a testator adopt to convey it?"

And far from thinking that the intent of the testator, as gathered from the "scheme" and from other expressions, would negative the "plain intent" as he understood them, Judge Tucker is equally sure that it but strengthens his views. This difference between these two eminent Judges, Tucker and Carr, is a striking illustration of the danger and unsatisfactory results of abandoning the plain import of the words, to gather an "intent" from the scheme of a will.

In *Stinson v. Day*, 1 Rob. 435, the devise was to a "married daughter A. R. and her heirs, W. S. R. included, to be held and managed by his executors in the following manner, that is to say, A. R. and her children shall have the rents and the profits and not to be sold by them or any of them until the youngest child comes to the age of 21, and not then without the consent of daughter A. R." Judge Baldwin and Judge Allan both delivered opinions, holding that the mother took a sole estate for life, and the children nothing, and gathered this intent from the will, following *Wallace v. Dold* (*supra*). Judge Stanard dissented, however, and adopted the dissenting opinion of Judge Tucker in *Wallace v. Dold*, saying:

"I think the argument of that (dissenting) opinion and the cases referred to in it conclude with equal, if not greater, cogency in support of a construction whereby the children take a present interest in the profits."

Thus far the context of the will seems to have been looked to, to some extent at least.

In *Nickell v. Handly*, 10 Gratt. 336, the devise was to a trustee "for the life of testatrix's daughter H., remainder to the children of H., living at her death, and the trustee was directed so to use and conduct the farm, etc., as to be most advantageous to the interest and support of said H. and her children during her life." The suit grew out of an attempt on the part of creditors to subject the mother's interest to debts. Judge Samuels delivered the opinion of the court, holding that neither the mother nor the children had any interest which could be separated from the other, unless the property produced a surplus over and above the amount necessary to support the mother and five children; but in such event the surplus was to be divided into six parts, one part going to each, thus in effect holding that the will created a joint interest in the life estate. Judge Moncure dissented,

holding that each took one-sixth interest, which *could* be separated at once. Both the majority and dissenting opinions in this case established a *joint interest* in the profits, and thus were contrary to *Wallace v. Dold* and *Stinson v. Day*; but this is the only case in which these two last named cases have not been cited with approval and followed, and in which the doctrine of each has not been gradually extended by applying the idea that the use of the words "and child" or "and children" import *motive*, and do not carry a beneficial interest, and by paying less and less attention to the "intent" as gathered from the "scheme of the will," etc.

The next case in which a similar question arose was in *Armstrong v. Pitts* (1856), 13 Gratt. 235. This devise was to trustees "for a son, for his support and maintenance, and for the support and maintenance of his family." Judge Moncure delivered the opinion, but the case went off without the question of the extent of the children's interest being passed on, the authorities on both sides merely, being cited (p. 243).

In *Simmons v. Bean*, 13 Gratt. 422, the same question was presented to the same court, and the same Judge, Moncure, again delivered the opinion, but again avoided the issue, after again stating the point and again citing the authorities relied upon on each side, including *Wallace v. Dole* and *Nickell v. Handly*—deciding the case upon another point.

This is the last case, however, in which any doubt seems to have been entertained, or in which the judges seemed to have bothered about the *intent* "as gathered from the scheme," etc.

In *Craig v. Walthall*, 14 Gratt. 518 (1858), the testator devised to his wife his slaves for life, all the rest of his personal property, "to enjoy and use for the best interests of his children," and his bonds, then due, to be kept in the hands of responsible persons, bearing interest, to be used by his "wife for the benefit of his children"—certainly a very strong form of devise in favor of the children. Judge Samuels delivered the opinion of the court. He says nothing as to the "intent as gathered from the scheme," or other clauses, but merely says:

"It appears that testator's whole personal estate was bequeathed to his wife in some form, the slaves for life, his goods and chattels *absolutely*, for, on authority of *Stinson v. Day*, 1 Rob. 435, and *Wallace v. Dold*, 3 Leigh, 258, it cannot be held that testator's children had any interests in the goods and chattels."

In *Penn v. Whitehead*, 17 Gratt. 503 (1867), the instrument was

a deed of settlement. The language used was "to the separate use of said Maria P. for and during her natural life, and shall remain in her possession for the support and maintenance of said Maria P: and her issue and family, and for no other purpose whatever." Judge Moncure delivered the opinion, and (p. 514) says:

"These latter words . . . . seem to have been intended only to show the motive, . . . . and not to limit or curtail the separate use and benefit for life expressly given her. There is a much plainer indication of an intent to give an exclusive use for life to the wife in this case, than there were in the cases of *Wallace v. Dold* and *Stinson v. Day*, in which it was held that an exclusive use was given."

It will thus be seen that both of the judges who delivered opinions in *Nickell v. Handly* (*supra*), both of which cases are in apparent conflict with *Wallace v. Dold* and *Stinson v. Day* (*supra*)—Judge Samuels in *Craig v. Walthall*, and Judge Moncure in *Penn v. Whitehead*—expressly approve and follow those cases.

In *Rhett v. Mason*, 18 Gratt. 541 (1868), the devise was "to my beloved wife for her support and maintenance, and for the support and maintenance of our children during her life and widowhood." Judge Moncure delivered the opinion in this case also, and held, "upon the language of the clause the widow is entitled absolutely during her widowhood to the whole profits of the estate, and there is no trust for the children." It is true that later on in this case he goes into an elaborate discussion of the "intent" as gathered from the other clauses, but in support of this conclusion." This, of course, does not destroy the force of the opinion as holding that the *language* of the clause *alone* gives an absolute and sole estate for life to the widow.

In *Bain v. Buff*, 76 Va. 371 (1882), the testator directed his estate to be paid over to his daughter "for the sole and separate use of herself and child or children during her life, and after her death to be vested in fee in her child or children." Judge Burks, in delivering the opinion of the court, which holds that the mother takes the entire estate for life, says:

"The whole interest is vested in her absolutely and solely, not jointly with the children. The words 'for the sole and separate use of herself and her child or children,' etc., do not, we think, give any estate to the 'child or children,' but indicate the motive of the gift to the mother."

There is no search of the will in this case for an "intent" contrary to the plain import of the words, as Judge Riely's *dictum* would seem to require to sustain this construction, but it is so held because the "words" "do not, we think, give any estate to the child or children."

In *Atkinson v. McCormick*, 76 Va. 791, Judge Anderson delivered the unanimous opinion of the court, holding that a devise for the separate use of a married woman "*and her issue*," with devise over, upon her dying without issue, created a defeasible fee, and that the "*issue*" took no interest, basing the opinion upon *Rhett v. Mason* and *Bain v. Buff* (both *supra*).

*Mauzy v. Mauzy*, 79 Va. 537, was a case involving the construction of a deed conveying property "for the sole and separate use and benefit of the wife *and her children*." Judge Lewis delivered the opinion of the court, holding that the *language* above quoted merely indicated the "*motive*," and that the mother took the fee.

In *Waller v. Catlett*, 83 Va. 202, the language of the devise alone is given. It was to a trustee for the sole and separate use and benefit of "*my niece A. and her children*." The court, Judge Lacy delivering the opinion, without any inquiry as to the intent other than expressed in the clause itself, says:

"This was a devise to a trustee for the use and benefit of the mother, and passes no estate to the children during her life"—

citing *Wallace v. Dold* (*supra*), *Leake v. Benson*, 29 Gratt, 155, *Stinson v. Day*, and *Bain v. Buff* (*supra*).

In *Richardson v. Severs*, 84 Va. 259, a father sold land to a son-in-law upon the agreement that the latter should retain one-fourth of the purchase money "*for the benefit of his wife and children as an advancement from him to them*." Judge Lacy rendered the opinion, saying:

"There are no words creating a trust for the benefit of the wife and children. . . . The words 'for the benefit of his wife and children' do not create a trust; they merely indicate the motive of the *gift to the father*"—

citing *Bain v. Buff*, *Leake v. Benson*, *Penn v. Whitehead*, *Wallace v. Dold*, *Stinson v. Day*, and *Waller v. Catlett*.

In *Seibel v. Rapp*, 85 Va. 28, property was conveyed in trust to permit "*the mother during her life to possess and enjoy its income, for the support of herself and children*." Judge Lacy again delivered the opinion, and said:

"From the case of *Wallace v. Dold*, 3 Leigh, 258, it has been held, with some respectable dissent at first, that the gift to the wife *and her children was a gift to the wife*. The reference to the child indicated the motive of the gift."

In *Stace v. Bumgardner*, 89 Va. 418, Judge Lewis delivered the opinion. The deed construed was from a *feme sole* about to marry, to a trustee, conveying property for her sole and separate use, not to be liable for her husband's debts, and he to acquire no marital rights

therein, she to occupy the premises and to receive all the rents and profits, as though she were a *feme sole*, for the maintenance of *herself and any children hereafter born to her*, she to take the property in fee if she survived him. Judge Lewis says:

"That the mention of the children in the deed was not intended to confer a present interest in the profits, but merely indicates the motive retaining an exclusive interest therein, is, we think, clear. . . . Nor is there anything in the declaration of the trusts that restricts her rights to the whole profits during her life. On the contrary, the *language of the deed*, fairly construed, supports the view that no such restriction was intended."

Judge Lewis also discusses the "intent, as derived from the context and the surrounding circumstances," but he uses these to aid the "language of the deed," and not to reverse "the plain import of the words." He also reviews all of the cases from *Wallace v. Dold* to *Seibel v. Rapp*, quoting the *language* of the devise or deed in each case, and following the rule of construction established by them, to-wit: that "the mention of the children merely indicated the motive," and not the rule implied by Judge Riely's *dictum* that the words must be given their ordinary meaning, unless the context and surrounding circumstances justify a contrary construction.

In *Mosby v. Paul*, 88 Va. 534, the question was squarely raised and as squarely met, and the writer, at least, thought the question was by it forever put at rest in Virginia. Judge Fauntleroy delivered the unanimous opinion of the court. He says:

"The testator left three sons and two daughters. The questions presented arise on the proper construction of the devises and bequests to the said daughters made in the first, third and eighth clauses of the will, as follows:

"1st. I bequeath to my daughter Louisa S. McComb and *her children* the farm upon which I reside. I also give *them* the one-half interest in the plantation in Louisa. The third clause reads: I desire that my son James C. Paul have the home place in Texas, estimated at ten thousand dollars, which he is to pay to my daughter Victoria V. Mosby and *her children in trust*. By the eighth clause the testator divides the residuum of his estate into five equal parts and gives one to each of his children. In giving to his daughters he uses this language: 'Victoria V. Mosby and *her children* one share.' 'Louisa S. McComb and *her children*, one share.' The court (below) . . . construed the devises and legacies to give to each of the said daughters a life estate with remainder to her children. . . . The guardian *ad litem* for the infant and counsel for the children contends that the ancient common law rule as established in *Wilde's Case*, 6 Coke R. 17, shall be applied to the *language* used by the testator, which would give these devises and legacies to the *mother* and *children* jointly in each case.

"The appellant, Mrs. Mosby, contends that the whole of the devises and legacies goes to the *mother*; 'the children being named simply to show the motive

of the gift ;' that the words 'and her children' annexed to the gift to the daughter, are words of limitation and not words of purchase, and that they were not intended by the testator, nor do they operate in *law*, to diminish the portion given to the daughter . . . .

"The court below by its construction ignores both of these contentions and makes the mother a life tenant and 'her children' vested remaindermen in fee, a construction which is untenable and unprecedented; and all that is left for this court to do is, to adopt the construction claimed by the appellant, or to apply the old rule in *Wilde's Case*, and say that the children have by the will present equal rights as tenants in common or joint-tenants with their mother, to the exclusion of afterborn children. At the date of her will Mrs. Mosby was and still is a young married woman, and may yet have many more children. There are many cases decided by this court in which the language of these legacies has been construed, and the question has been presented in every conceivable form; yet *in every instance* the mother was held to take the whole estate given, and the language 'and her children' construed to merely indicate the motive. . . . And this is equally the rule or rationale of the decisions where the estate given to the 'mother and her children' is the absolute and not merely a life estate.

"Under this unbroken line of decisions by this court, we are of opinion to annul and reverse the decree complained of as wholly erroneous, . . . . and our judgment is that the appellant is entitled under the will to the absolute fee-simple estate in the devises and legacies to her and her children, who are named merely to indicate the motive of the gift to her."

This case has been quoted from at length to show the extent to which the doctrine of *Wallace v. Dold* had been carried, up to the time that the present bench of judges assumed office, and because this case has been generally regarded as finally establishing the doctrine that unless there is in the deed or will something other than the words "and her children" to indicate that a beneficial interest was intended for the children, that a devise or bequest to a mother "and her children" would be construed as giving the entire beneficial interest to the mother.

This line of cases seems also to have been recognized and adopted as a whole, and the case of *Mosby v. Paul* especially, by the present court in the case of *Fackler v. Berry*, 93 Va. 569. Judge Keith, in delivering the unanimous opinion in that case, says:

"There is a class of cases, beginning with *Wallace v. Dold*, 3 Leigh, 258, and running down to *Mosby v. Paul*, 88 Va. 533, in all of which the language is far more apt and proper to create an interest in the children than that upon which we are commenting, but in each of those cases it was held that the mother took a fee simple to the exclusion of any interest whatsoever in the children, who were named merely as indicating the motive or consideration for the gift."

The same rule of construction was again approved by the present court in *Walke v. Moore*, 95 Va. 729. The property in that case was

conveyed to a trustee "for the sole and exclusive use and benefit of Virginia Baughan *and her children.*" Judge Riely, who delivered the opinion, after stating the point, says:

"Its determination is not wholly free from doubt or difficulty, but it is not perceived how the case can be reasonably distinguished from that class of cases headed by *Wallace v. Dold*, 3 Leigh, 258, and followed by *Stinson v. Day*, *Penn v. Whitehead*, *Leake v. Benson*, *Bain v. Buff*, *Mauzy v. Mauzy*, *Waller v. Catlett*, *Stace v. Bumgardner*, and *Nye v. Lovett*. . . . If, in the cases cited above, the words 'for the sole and separate use of herself and children,' 'for the sole and separate use and benefit of herself and her children,' and similar words, merely indicated the motive for the gift to the mother and vested no interest in the children, the words 'for the sole and exclusive benefit of the said Baughan and her children,' in the deed under consideration, should receive the same construction, especially in view of the powers vested in the wife. . . . We are of opinion that Virginia Baughan took an exclusive estate in fee."

In *Jones v. Jones*, 96 Va. 151 (decided in March, 1899), the conveyance was from a husband to a trustee for the benefit of the wife of the grantor, and "any child or children thereafter born of their marriage, allowing the said Mary E. Jones *and her children* at all times possession and control of said property, and be entitled to its accretions, and she shall be at liberty at any time to make sale or exchange, by the trustees uniting in the deed." Judge Riely again delivered the opinion of the court, and found it necessary to say:

"The court is of the opinion that the wife took under this the entire interest in the land to the exclusion of the children. This decision is in conformity to a long line of decisions made in similar cases, in which the reasons for holding this construction to be the real purpose and meaning of the grantor are fully given, and any discussion of them here would be superfluous. *Walke v. Moore*, 95 Va. 729, and the cases there cited."

It is difficult to understand how Judge Riely, with this long line of decisions before him, three of which are from the present court, one or the other of which latter cites with approval all the preceding cases—and himself in *Walke v. Moore* having said "if the words 'for the separate and sole use of herself and children,' 'for the sole and separate use and benefit of herself and children,' and similar words, merely indicated the motive for the gift to the mother, and vested no interest in the children, the words 'for the sole and exclusive benefit of the said Virginia Baughan and her children' should receive the same construction"—could have come to the conclusion that the words "to my wife, Emma Lee Vaughan, and to my children" should give a joint estate to the wife *and* children.

Why is it that the words "for the sole and separate use of the said

Virginia Baughan and her children" should mean that Virginia Baughan should take it all and the children nothing, while the words "to my wife Emma Lee Vaughan and to my children" should mean that Emma Lee Vaughan takes but a child's share and the children take the balance?

The only difference in the form of the two devises is, that in the first deed, a trustee having been interposed, this made necessary the words "for the benefit of," but, so far as the beneficial interest is concerned, I suppose that no one will deny that a conveyance "to A, trustee, for the benefit of B," is identical in effect with a direct conveyance to B without such trustee. The second and last difference is that the word "to" used before the words "my wife" is repeated before the words "my children," and this repetition doubtless makes a more emphatic and positive declaration, but we find that just such repetitions have been indulged in by other testators and grantors, without having the meaning of other words changed by reason thereof; for instance, in *Rhett v. Mason*, 16 Gratt. (*supra*), the devise was to the wife for "her support and maintenance and *for the support and maintenance of our children*," thus repeating before the words "our children" the exact words used previously to vest a beneficial interest in the wife, but in that case the wife took the entire estate.

I think the error into which Judge Riely fell is very plainly demonstrated by a subsequent passage in the same opinion, in which he says:

"The court has held, in a long line of cases, beginning with *Wallace v. Dold*, 3 Leigh, 258, that where the context and language of the instrument, whether a deed or will, be taken together as a whole manifest an intention that the mother should take the whole estate, *although expressed to be to her and her children*, the mention of the children in such case merely indicates the motive or consideration for the gift, and does not vest in them any interest."

The only inference that can be drawn from this language, in connection with the language first quoted above from the same opinion, is, that where the devise is so "expressed to be to her and her children" and, to use Judge Riely's own language, "this stood alone and constituted all that related to the devise, it could not be doubted that she and the children would have taken a joint estate in all of the property," because "this would be the plain import of the words," etc. The cases above reviewed show that this is *not* the plain import of the words *as they have been construed* uniformly since 1831 by our Supreme Court; and the only two judges who have so construed them—Tucker in *Wallace v. Dold* and Stanard in *Stinson v. Day* (*supra*)—

did so in dissenting opinions as above noted; and no opinion can be found in which "the plain import of the words" in such a devise has been permitted to be changed, by doubtful expressions tending to show a possible contrary intent. It is true that in construing such devises the judges have, in various cases, more particularly in the earlier ones, looked to the other parts of the will for the "intent," but they did so for the purpose of strengthening their views that the intent, as gathered from the words themselves, was to vest a sole estate in the mother, as was done by Judge Moncure in *Rhett v. Mason*, when he said (page 554): "In the first place, let us examine the second clause by itself *without* reference to the context and the surrounding circumstances," which he does, and concludes that "*upon the language of the clause* the widow is entitled absolutely;" and he says (page 559): "It will be found that the rest of the will fully confirms this construction;" and (p. 560) he says also: "Now, if we look at the surrounding circumstances our construction will be still further confirmed," etc. We go further than this, however, and say that "if the plain import of the words" is as construed by Judge Riely, that it is violative of one of the cardinal rules of construction to look to other parts of the will to alter this "plain import" by inferences more or less doubtful. In discussing a somewhat similar question in *Rhett v. Mason*, 18 Gratt. 561, Judge Moncure says:

"Being thus satisfied as to what was the true intention expressed in the second clause of his will, I am relieved from the necessity of reviewing the many cases which were cited in the argument, as they all concur, in affirming or conceding this cardinal rule of construction, that the intention, *as expressed*, if it be lawful, must prevail, and that to ascertain that intention, *if it be at all doubtful*, we may look to the whole will and the surrounding circumstances."

This is very different from looking to the whole will to negative the plain and natural import of the language.

Judge Buchanan, in *Gaskins v. Hunton*, 92 Va. 531, thus states the rule:

"It is a settled rule of construction, both in deeds and wills, that if an estate is conveyed, or an interest given, or a benefit bestowed, in one part of the instrument by clear, unambiguous and explicit words, such estate, interest, or benefit is not diminished or destroyed by words in another part of the instrument, unless the terms which diminish or destroy the estate before given be as clear and as decisive as the terms by which it was created."

Now, applying this rule, and if the plain and natural import of the words "to my wife and to my children" are as clear as Judge Riely states them to be, and "it would be difficult to use plainer or more

explicit language to express the intention where the gift of a joint estate was the object," where are the words equally "as clear and decisive" in the "subsequent clause," to destroy the joint estate before given?

Before this opinion was rendered but few lawyers would have felt serious hesitation in passing on a title with such a devise in it, but there are few who would be bold enough to do so after this *obiter dictum* from such an eminent and distinguished jurist, and one who so justly enjoys the esteem and admiration of the bar of the State for his knowledge of the law, as well as for the grace and precision with which he propounds it. I have not been led to write this article because I am counsel in any case involving the construction of such a clause, but merely because, on reading the principal case, I was struck with the fact that the reasons upon which it was based did away with a rule of construction which I before regarded as well settled and easily followed, and substituted in its place one which will give room to great differences of opinion on the part of lawyers and judges, and must, therefore, result in much litigation.

JOHN S. BARBOUR.

Culpeper, Va.

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#### UNANIMITY OF JURY VERDICTS IN CIVIL CASES IN VIRGINIA.

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The July number of the LAW REGISTER contained an interesting and instructive article by Mr. B. B. Lindsey on the "Unanimity of Jury Verdicts." His position—that a unanimous verdict of a jury should not be required in civil cases—is clearly and forcibly stated. It is not, however, the purpose of this paper to discuss the subject along the line of that article, but to present some reasons why the legislature of Virginia can change the unanimity rule without infringing upon the constitution.

The general impression seems to be that such a change cannot be made without first amending the constitution, and the esteemed editor of the REGISTER seems to "wink" that way in his editorial on the article above referred to.

Trial by jury, in some form, has been the mode of trying controversies between man and man for so many years that it is well nigh